

Attorney or Party Name, Address, Telephone & FAX Nos., State Bar No. & Email Address SHERYL K. ITH [SBN 225071] sith@cookseylaw.com JENNIFER H. WANG [SBN 242998] jwang@cookseylaw.com COOKSEY, TOOLEN, GAGE, DUFFY & WOOG 535 Anton Blvd, 10th Floor Costa Mesa, CA 92626 (714) 431-1100; FAX: (714) 431-1145 <input type="checkbox"/> Individual appearing without attorney <input checked="" type="checkbox"/> Attorney for: Movant	FOR COURT USE ONLY			
UNITED STATES BANKRUPTCY COURT CENTRAL DISTRICT OF CALIFORNIA - LOS ANGELES DIVISION				
In re: HELEN C. MANZANO, Debtor, and ROMEO A. MANZANO, Non-filing Co-Debtor, Debtor(s).	<table border="1"><tr><td>CASE NO.: 2:13-bk-38905-SK CHAPTER: 13</td></tr><tr><td style="text-align: center;">NOTICE OF MOTION AND MOTION FOR RELIEF FROM THE AUTOMATIC STAY UNDER 11 U.S.C. § 362 (with supporting declarations) (PERSONAL PROPERTY)</td></tr><tr><td>DATE: 05/07/2014 TIME: 8:30 am COURTROOM: 1575</td></tr></table>	CASE NO.: 2:13-bk-38905-SK CHAPTER: 13	NOTICE OF MOTION AND MOTION FOR RELIEF FROM THE AUTOMATIC STAY UNDER 11 U.S.C. § 362 (with supporting declarations) (PERSONAL PROPERTY)	DATE: 05/07/2014 TIME: 8:30 am COURTROOM: 1575
CASE NO.: 2:13-bk-38905-SK CHAPTER: 13				
NOTICE OF MOTION AND MOTION FOR RELIEF FROM THE AUTOMATIC STAY UNDER 11 U.S.C. § 362 (with supporting declarations) (PERSONAL PROPERTY)				
DATE: 05/07/2014 TIME: 8:30 am COURTROOM: 1575				

Movant: SANTANDER CONSUMER USA INC.

1. NOTICE IS HEREBY GIVEN to the Debtor and trustee (if any)(Responding Parties), their attorneys (if any), and other interested parties that on the above date and time and in the stated courtroom, Movant in the above-captioned matter will move this court for an order granting relief from the automatic stay as to Debtor and Debtor's bankruptcy estate on the grounds set forth in the attached motion.

2. **Hearing Location:**

- | | |
|---|--|
| <input checked="" type="checkbox"/> 255 East Temple Street, Los Angeles, CA 90012 | <input type="checkbox"/> 411 West Fourth Street, Santa Ana, CA 92701 |
| <input type="checkbox"/> 21041 Burbank Boulevard, Woodland Hills, CA 91367 | <input type="checkbox"/> 1415 State Street, Santa Barbara, CA 93101 |
| <input type="checkbox"/> 3420 Twelfth Street, Riverside, CA 92501 | |

This form is mandatory. It has been approved for use in the United States Bankruptcy Court for the Central District of California.

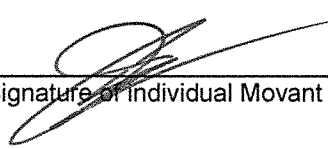
3. ☒ a. This motion is being heard on REGULAR NOTICE pursuant to LBR 9013-1. If you wish to oppose this motion, you must file a written response to this motion with the court and serve a copy of it upon the Movant's attorney (or upon Movant, if the motion was filed by an unrepresented individual) at the address set forth above no less than 14 days before the above hearing and appear at the hearing of this motion.
- ☐ b. This motion is being heard on SHORTENED TIME. If you wish to oppose this motion, you must appear at the hearing. Any written response or evidence must be filed and served:
- ☐ at the hearing ☐ at least _____ days before the hearing.
- (1) ☐ A Motion for Order Shortening Time was not required (according to the calendaring procedures of the assigned judge).
- (2) ☐ A Motion for Order Shortening Time was filed per LBR 9075-1(b) and was granted by the court.
- (3) ☐ A Motion for Order Shortening Time has been filed and remains pending. Once the court has ruled on that Motion, you will be served with another notice or an order that will specify the date, time and place of the hearing on the attached motion and the deadline for filing and serving a written opposition to the motion.
4. You may contact the Clerk's Office or use the court's website (www.cacb.uscourts.gov) to obtain a copy of an approved court form for use in preparing your response (optional LBR form F 4001-1.RESPONSE), or you may prepare your response using the format required by LBR 9004-1 and the Court Manual.
5. If you fail to file a written response to the motion or fail to appear at the hearing, the court may treat such failure as a waiver of your right to oppose the motion and may grant the requested relief.

Date:

4/8/14

COOKSEY, TOOLEN, GAGE, DUFFY & WOOG
Printed name of law firm (if applicable)

JENNIFER H. WANG
Printed name of individual Movant or attorney for Movant


Signature of individual Movant or attorney for Movant

MOTION FOR RELIEF FROM STAY

Movant: SANTANDER CONSUMER USA INC.

1. **The Property at Issue:** Movant moves for relief from the automatic stay with respect to the following personal property (Property):

☒ Vehicle (*describe year, manufacturer, type, and model*): 2008 TOYOTA 4RUNNER

Vehicle Identification Number: JTEZU14R38K007983

Location of vehicle (if known):

☐ Equipment (*describe manufacturer, type, and characteristics*):

Serial number(s):

Location (if known):

☐ Other Personal Property (*describe type, identifying information, and location*):

2. **Case History:**

- a. ☒ A voluntary ☐ An involuntary petition under chapter ☐ 7 ☐ 11 ☐ 12 ☒ 13 was filed on (*specify date*): 12/06/2013
- b. ☐ An order of conversion to chapter ☐ 7 ☐ 11 ☐ 12 ☐ 13 was entered on (*specify date*):
- c. ☒ Plan was confirmed on (*specify date*): 03/07/2014
- d. ☐ Other bankruptcy cases affecting this Property have been pending within the past two years. See attached declaration.

3. **Grounds for Relief from Stay:**

- a. ☒ Pursuant to 11 U.S.C. § 362(d)(1), cause exists to grant Movant the requested relief from stay as follows:
- (1) ☒ Movant's interest in the Property is not adequately protected.
- (a) ☐ Movant's interest in the Property is not protected by an adequate equity cushion.
- (b) ☐ The fair market value of the Property is declining and payments are not being made to Movant sufficient to protect Movant's interest against that decline.
- (c) ☐ No proof of insurance re the Property has been provided to Movant, despite borrower's obligation to insure the collateral under the terms of Movant's contract with Debtor.
- (d) ☐ Payments have not been made as required by an adequate protection order previously granted in this case.
- (2) ☐ The bankruptcy case was filed in bad faith to delay, hinder or defraud Movant.
- (a) ☐ Movant is the only creditor or one of very few creditors listed on the master mailing matrix.

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- (b) ☐ The Property was transferred to Debtor either just before the bankruptcy filing or since the filing.
- (c) ☐ Non-individual entity was created just prior to bankruptcy filing for the sole purpose of filing bankruptcy.
- (d) ☐ Other bankruptcy cases have been filed asserting an interest in the same Property.
- (e) ☐ The Debtor filed what is commonly referred to as a "face sheet" filing of only a few pages consisting of the Petition and a few other documents. No schedules or Statement of Affairs (or Chapter 13 Plan, if appropriate) has been filed.

(3) ☒ (*Chapter 12 or 13 cases only*)

- (a) ☐ Postconfirmation plan payments have not been made to the standing trustee.
- (b) ☒ Postconfirmation payments required by the confirmed plan have not been made to Movant.

(4) ☐ The lease has been rejected or deemed rejected by operation of law.

(5) ☒ For other cause for relief from stay, ~~see attached continuation page.~~ Post-Petition payments have not been made to Movant

- b. ☐ Pursuant to 11 U.S.C. § 362(d)(2)(A), Debtor has no equity in the Property; and pursuant to 11 U.S.C. § 362(d)(2)(B), the Property is not necessary for an effective reorganization.

4. ☐ Movant also seeks annulment of the stay so that the filing of the bankruptcy petition does not affect postpetition acts, as specified in the attached Declaration(s).

5. **Evidence in Support of Motion: (*Important Note: Declaration(s) in support of the Motion MUST be attached hereto.*)**

- a. ☒ Movant submits the attached Declaration(s) on the court's approved forms (if applicable) to provide evidence in support of this Motion pursuant to LBRs.
- b. ☐ Movant submits the attached supplemental Declaration(s) under penalty of perjury, to provide additional admissible evidence in support of this Motion.
- c. ☐ Movant requests that the court consider as admissions the statements made by Debtor under penalty of perjury concerning Movant's claims and the Property set forth in Debtor's schedules. Authenticated copies of the relevant portions of the schedules are attached as Exhibit ____.
- d. ☒ Other evidence (*specify*): Chapter 13 Plan (Exhibit "C"); Debtor's payment history (Exhibit "D")

6. ☐ An optional Memorandum of Points and Authorities is attached to this Motion.

WHEREFORE, Movant prays that this court issue an order terminating or modifying the stay and granting the following (specify forms of relief requested):

1. ☒ Relief from the stay allowing Movant (and any successors or assigns) to proceed under applicable non-bankruptcy law to enforce its remedies to repossess and sell the Property.
2. ☐ Annulment of the stay so that the filing of the bankruptcy petition does not affect postpetition acts, as specified in the attached declaration.

3. Additional provisions requested:

- a. ☒ That the 14-day stay prescribed by FRBP 4001(a)(3) be waived.
- b. ☐ That extraordinary relief be granted as set forth in the attachment (*attach optional LBR form F 4001-1.EXT.RELIEF.ATTACH*).
- c. ☒ For other relief requested, see attached continuation page.

4. If relief from stay is not granted, Movant respectfully requests the court to order adequate protection.

Date: 4/8/14

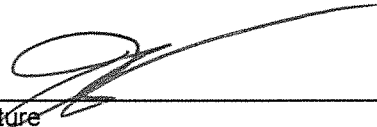
Respectfully submitted,

SANTANDER CONSUMER USA INC.

Printed name of Movant

COOKSEY, TOOLEN, GAGE, DUFFY & WOOG

Firm name of attorney for Movant (if applicable)


Signature

JENNIFER H. WANG

Printed name of individual Movant or attorney for Movant

MOTION FOR RELIEF FROM STAY
In re: HELEN C. MANZANO, 2:13-bk-38905-SK
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3.c. Additional provisions requested:

- (1) That the Order be binding and effective despite any conversion of this bankruptcy case to a case under any other chapter of Title 11 of the United States Code.
- (2) Relief from the co-debtor stay to be terminated as to the non-filing co-debtor ROMEO A. MANZANO.

PERSONAL PROPERTY DECLARATION

I, KENNETH ARREDONDO, declare as follows
(Print Name of Declarant)

1. I have personal knowledge of the matters set forth in this Declaration and, if called upon to testify, I could and would competently testify thereto. I am over 18 years of age. I have knowledge regarding Movant's interest in the Property that is the subject of this motion because (specify):

- ☐ I am the Movant and owner of the Property.
- ☐ I manage the Property as the authorized agent for the Movant.
- ☒ I am employed by the Movant as (state title and capacity): Bankruptcy Specialist
- ☐ Other (specify):

2. I am one of the custodians of the books, records and files of Movant as to those books, records and files that pertain to loans, leases, or extensions of credit given to Debtor concerning the Property. I have personally worked on books, records and files, and as to the following facts, I know them to be true of my own knowledge or I have gained knowledge of them from the business records of Movant on behalf of Movant, which were made at or about the time of the events recorded, and which are maintained in the ordinary course of Movant's business at or near the time of the acts, conditions or events to which they relate. Any such document was prepared in the ordinary course of business of Movant by a person who had personal knowledge of the event being recorded and had or has a business duty to record accurately such event. The business records are available for inspection and copies can be submitted to the court if required.

3. The Property that is the subject of this Motion is:

- ☒ Vehicle (describe year, manufacturer, type, model and year): 2008 TOYOTA 4RUNNER

Vehicle Identification Number: JTEZU14R38K007983

Location of vehicle (if known):

- ☐ Equipment (describe manufacturer, type, and characteristics):

Serial number(s):

Location (if known):

- ☐ Other Personal Property (describe type, identifying information, and location):

4. Debtor ☒ listed the Property on Schedule B ☐ did not list the Property on Schedule B.

5. The nature of Debtor's interest in the Property is:

- a. ☐ Sole owner
- b. ☒ Co-owner
- c. ☐ Lessee

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d. ☐ Other (specify):

6. The lease was rejected on (specify date) _____:

- a. ☐ by operation of law.
b. ☐ by order of the court.

7. Movant has a perfected security interest in the Property.

a. The Property is a motor vehicle, boat, or other property for which a title certificate is provided for by state law. True and correct copies of the following items are attached to this motion:

- (1) ☒ Certificate of title ("pink slip") attached as exhibit "A" _____.
(2) ☒ Vehicle or other lease agreement attached as exhibit "B" _____.
(3) ☐ Security agreement attached as exhibit _____.
(4) ☐ Other evidence of perfection attached as exhibit _____.

b. The Property is equipment, intangibles, or other personal property for which a title certificate is not provided for by state law. True and correct copies of the following items are attached:

- (1) ☐ Security agreement attached as exhibit _____.
(2) ☐ UCC-1 financing statement attached as exhibit _____.
(3) ☐ UCC financing statement search results attached as exhibit _____.
(4) ☐ Results of search of recorded or filed leases attached as exhibit _____.
(5) ☐ Other evidence of perfection of a security interest attached as exhibit _____.

c. The Property is consumer goods. True and correct copies of the following items are attached:

- (1) ☐ Credit application attached as exhibit _____.
(2) ☐ Purchase agreement attached as exhibit _____.
(3) ☐ Account statement showing payments made and balance due attached as exhibit _____.
(4) ☐ Other evidence of perfection of a security interest (if necessary under state law) attached as exhibit _____.

☐ Other liens against the Property are set forth on the attached continuation page.

8. Status of Movant's debt:

- a. A true and correct copy of the promissory note or other document that evidences the debt owed by Debtor to Movant is attached as exhibit B _____.
b. Amount of current monthly payment: \$ 685.58 _____

c. Number of payments that have come due and were not made: 4

d. Last payment received on (specify date): 12/30/2013

9. Attached hereto as exhibit D is a true and correct copy of a POSTPETITION payment history that accurately reflects the dates and amounts of all payments made by the Debtor since the petition date.

10. Amount of Movant's debt:

a. Principal:\$ 26,870.90
b. Accrued interest:\$ _____
c. Costs (attorney's fees, late charges, other costs):\$ _____
d. Advances (property taxes, insurance):\$ _____
e. TOTAL CLAIM as of 04/02/2014 :\$ 26,870.90

f. Future payments due by time of anticipated hearing date (if applicable):
An additional payment of \$ 685.58 will come due on 04/28/2014,
and on the 28th day of each month thereafter. If the payment is not received by the _____
day of the month, a late charge of \$ _____ would be due under the terms of the
loan.

11. ☐ (Chapter 7 and 11 cases only) The fair market value of the Property is: \$ _____.
This valuation is based upon the following supporting evidence:

- a. ☐ This is the value stated for collateral of this year, make, model, and general features in the reference guide most commonly used source for valuation data used by Movant in the ordinary course of its business for determining the value of this type of collateral. True and correct copies of the relevant excerpts of the most recent edition are attached as exhibit _____.
- b. ☐ This is the value determined by an appraisal or other expert evaluation. A true and correct copy of the expert's report or declarations attached as exhibit _____.
- c. ☐ Debtor's admissions in the Schedules filed in the case. A true and correct copy of the relevant portions of the Debtor's Schedules are attached as exhibit _____.
- d. ☐ Other basis for valuation (specify): _____

NOTE: If valuation is contested, supplemental declarations providing additional foundation for the opinions of value should be submitted

12. Calculation of equity in Property:

- a. By subtracting the total amount of all liens from the value of the Property as set forth in Paragraph 11 above, I calculate that the Debtor's equity in the Property is \$ _____ (11 U.S.C. § 362(d)(2)(A)).
- b. I calculate that the value of the "equity cushion" in the Property exceeding Movant's debt and any lien(s) senior to Movant is \$ _____ (11 U.S.C. § 362(d)(1)).

13. ☐ The fair market value of the Property is declining based on/due to:

14. ☒ (Chapter 12 or 13 cases only) Chapter 12 or 13 case status information:

- a. 341(a) meeting currently scheduled for (or concluded on) the following date: 01/17/2014
Confirmation hearing currently scheduled for (or concluded on) the following date: 03/07/2014
Plan confirmed at hearing on the following date (if applicable): 03/07/2014

b. Postpetition/preconfirmation payments due BUT REMAINING UNPAID since the filing of the case:

(Number of) <u>3</u>	payment(s) due at \$ <u>685.58</u>	each	=	\$ <u>2,056.74</u>
(Number of) _____	payment(s) due at \$ _____	each	=	\$ _____
(Number of) _____	late charge(s) at \$ _____	each	=	\$ _____
(Number of) <u>1 MISC. Fee</u>	late charge(s) at \$ <u>15.00</u>	each	=	\$ <u>15.00</u>

- c. Postpetition/preconfirmation advances or other charges due but unpaid: \$ _____
(See attachment for details of type and amount.)

TOTAL POSTPETITION/PRECONFIRMATION DELINQUENCY: \$ 2,071.74

d. Postconfirmation payments due BUT REMAINING UNPAID since plan confirmation (if applicable):

(Number of) <u>1</u>	payment(s) due at \$ <u>685.58</u>	each	=	\$ <u>685.58</u>
(Number of) _____	payment(s) due at \$ _____	each	=	\$ _____
(Number of) _____	late charge(s) at \$ _____	each	=	\$ _____
(Number of) _____	late charge(s) at \$ _____	each	=	\$ _____

- e. Postconfirmation advances or other charges due but unpaid: \$ _____
(See attachment for details of type and amount.)

TOTAL POSTCONFIRMATION DELINQUENCY: \$ 685.58

- f. ☐ The claim is provided for in the chapter 12 or 13 Plan. Plan payment history is attached as exhibit _____.
g. ☐ See attached Declaration(s) of chapter 12 or 13 trustee regarding receipt of payments under the plan (attach LBR form F 4001-1.DEC.AGENT.TRUSTEE).
15. ☐ Movant has not been provided with evidence that the Property is currently insured, as required under the terms of the loan.
16. ☐ Movant seeks annulment of the automatic stay so that the filing of the bankruptcy petition does not affect any and all of the enforcement actions that were taken after the filing of the bankruptcy petition in this case.
a. ☐ These actions were taken by Movant without knowledge of the bankruptcy filing, and Movant would have been entitled to relief from stay to proceed with these actions.
b. ☐ For other facts justifying annulment, see attached continuation page.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

4-4-14 KENNETH ARREDONDO
Date Printed Name

[Signature]
Signature

This form is mandatory. It has been approved for use in the United States Bankruptcy Court for the Central District of California.

**MOVANT IS ENTITLED TO RELIEF FROM THE CO-DEBTOR
STAY UNDER §1301(c)(3)**

11 U.S.C. §1301 provides for a stay of action against any individual liable upon a consumer debt with the Debtor. 11 U.S.C. §1301(a). The Co-Debtor stay enjoins a creditor from acting or commencing or continuing any civil action to collect all or any part of such debt.

However, 11 U.S.C. §1301(c) provides:

“On request of a party in interest and after notice and a hearing, the court shall grant relief from the stay provided by (a) of this section with respect to a creditor, to the extent that -

(1) As between the debtor and the individual protected under (a) of this section, such individual received the consideration for the claim held by such creditor:

(2) The plan filed by the debtor proposes not to pay such claim;

or

(3) such Creditors interest would be irreparably harmed by continuation of such stay.”

Moving Party would be irreparably harmed by continuation of the Automatic Stay because the Vehicle is depreciating and payments are not being made to adequately protect Movant’s interest.

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CONCLUSION

For the foregoing reasons, Moving Party should be granted relief from the automatic stay of 11 U.S.C. §362 as well as the Co-Debtor stay of 11 U.S.C. §1301 to permit Moving Party and all agents acting on its behalf to exercise all of Moving Party's rights and remedies with respect to the vehicle in question.

DATED April 8, 2014

COOKSEY, TOOLLEN, GAGE, DUFFY & WOOG

By:


Jennifer H. Wang
Attorney for Moving Party

COOKSEY, TOOLLEN, GAGE, DUFFY & WOOG
535 Anton Boulevard, Tenth Floor
Costa Mesa, California 92626-1977

PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is:

535 Anton Blvd., 10th Floor, Costa Mesa, CA 92626

A true and correct copy of the foregoing document entitled: **NOTICE OF MOTION AND MOTION FOR RELIEF FROM THE AUTOMATIC STAY UNDER 11 U.S.C. § 362 (with supporting declarations) (PERSONAL PROPERTY)** will be served or was served (a) on the judge in chambers in the form and manner required by LBR 5005-2(d); and (b) in the manner stated below:

1. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF): Pursuant to controlling General Orders and LBR, the foregoing document will be served by the court via NEF and hyperlink to the document. On (date) 04/03/2014, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below:

TYSON TAKEUCHI, Attorney for Debtor: tyson@tysonfirm.com
KATHY A. DOCKERY, Trustee: efiling@CH13LA.com
UNITED STATES TRUSTEE (LA): ustpregion16.la.ecf@usdoj.gov

☐ Service information continued on attached page

2. SERVED BY UNITED STATES MAIL:

On (date) 4/9/14, I served the following persons and/or entities at the last known addresses in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States mail, first class, postage prepaid, and addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

DEBTOR: HELEN C. MANZANO, 427 E. Clarion Dr., Carson, CA 90745-1318
NON-FILING CO-DEBTOR: ROMEO A. MANZANO, 427 E. Clarion Dr., Carson, CA 90745
U.S. BANKRUPTCY JUDGE: THE HONORABLE SANDRA R. KLEIN, U.S. Bankruptcy Court,
255 E. Temple St., Ste. 1582, Los Angeles, CA 90012-3332

☐ Service information continued on attached page

3. SERVED BY PERSONAL DELIVERY, OVERNIGHT MAIL, FACSIMILE TRANSMISSION OR EMAIL (state method for each person or entity served): Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on (date) _____, I served the following persons and/or entities by personal delivery, overnight mail service, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on, or overnight mail to, the judge will be completed no later than 24 hours after the document is filed.

☐ Service information continued on attached page

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

4/9/14
Date
NANCY G. WATERS
Printed Name

Nancy G. Waters
Signature

This form is mandatory. It has been approved for use in the United States Bankruptcy Court for the Central District of California.